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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,964	10/12/2000	Geert Maertens	2551-48	5719
23117	7590	05/02/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			HILL, MYRON G	
			ART UNIT	PAPER NUMBER
			1648	

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/686,964	<b>Applicant(s)</b> MAERTENS ET AL.	
	<b>Examiner</b> Myron G. Hill	<b>Art Unit</b> 1648	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 37- 43, 62, 63, 72, 73, 77-82, 87, 88, 98, 101 is/are pending in the application.
- 4a) Of the above claim(s) 42, 43, 79-82, 87, 88, 98, 101 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37- 41, 62, 63, 72, 73, 77, 78, is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This action is in response to the paper filed 2/22/2006.

Claims 37- 41, 62, 63, 72, 73, 77, and 78 are under consideration.

Claims 42, 43, 79-82, 87, 88, 97, and 101 are withdrawn from consideration.

### ***Rejections Withdrawn***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 44- 47 and 83- 86 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims were canceled and thus the rejection is moot.

### ***Rejections Necessitated By Amendment***

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim has been amended to add "adding a reducing

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agent" in line 4. The resulting wording does not make sense... "wherein said immunoassay kit has been produced by adding a reducing agent in for an ELISA kit. The claim is treated such that parts I, ii, and iii are types of kits

***Claim Rejections - 35 USC § 102***

Claims 37, 38, 40, and 41 are rejected under 35 U.S.C. 102(e) as being anticipated by Seidel *et al.* (US 6306579).

Applicant argues that that Seidel *et al.* does not teach adding reducing agent in the specific steps as recited in the claims and thus the claims are novel.

Applicant's argument has been fully considered and not found persuasive.

The claims are drawn to a product, not a method. The method steps in the claims are treated as product by process limitations. The "steps" by themselves do not add patentable weight to the claims for that reason. Applicant has not shown or pointed out how the product as claimed differs from the prior art or that it is different. If the claims were to a method, the specific order of recited steps would constitute discrete method steps.

Thus, Seidel *et al.* anticipate the claimed invention and the rejection is maintained.

***Claim Rejections - 35 USC § 103***

Claims 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seidel *et al.* (US 6306579) as applied to claims 37, 38, 40, and 41 above, and further in view of Leroux-Roels.

Claims 80-82 which were rejected in the previous action in this rejection are now withdrawn from consideration because the claims were amended to be method claims.

Claims 37-41, 62, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seidel *et al.* (US 6306579) as applied to claims 37, 38, 40, and 41 above, and further in view of Figard (US 5616460, previously cited).

Claims 87 and 88 which were rejected in the previous action in this rejection are now withdrawn from consideration because the claims were amended to be method claims.

Claims 37, 77 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seidel *et al.* (US 6306579) as applied to claims 37, 38, 40, and 41 above, and further in view of Icardi *et al.*

Applicant argues all the 103 rejections together.

Applicant argues that that Seidel *et al.* does not teach adding reducing agent in the specific steps as recited in the claims and thus the claims are patentable over Seidel *et al.* in combination with the other cited references.

Applicant's argument has been fully considered and not found persuasive.

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As stated above and repeated here, the amendments do not differentiate over the prior art. The claims are drawn to a product, not a method. The method steps in the claims are treated as product by process limitations. The "steps" by themselves do not add patentable weight to the claims for that reason. Applicant has not shown or pointed out how the product as claimed differs from the prior art or that it is different. If the claims were to a method, the specific order of recited steps would constitute discrete method steps.

Thus, the claims are unpatentable over the cited art and the rejections are maintained.

### ***Conclusion***

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Myron G. Hill whose telephone number is 571-272-0901. The examiner can normally be reached on 8:30 am-5 pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Myron G. Hill  
Patent Examiner  
27 April 2006

  
JAMES HOUSEL  
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4/28/06